

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

ALEXANDER SIMONE LEWIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:08-CV-00683-HEA
	)	
JOHN FRANK, <i>et al.</i>	)	
	)	
Defendants.	)	

**DEFENDANTS FRANK, DAUT, BURLE, FAVAZZA, AND MARTIN’S  
MOTION TO DISMISS AND SUGGESTIONS IN SUPPORT**

Defendants Frank, Daut, Burle, Favazza, and Martin request that this Court dismiss Plaintiff’s claims against them in their official capacities as follows:

**I. Parties**

The plaintiff is individual Alexander Simone Lewis. The defendants are employees of the St. Louis Metropolitan Police Department (SLMPD): Sgt. Frank, and Officers Daut, Burle, Favazza, and Martin (hereinafter collectively “defendants”).

**II. Plaintiff’s claims**

Plaintiff attempts to bring 2 claims under 42 U.S.C. § 1983 against the defendant officers: (1) excessive force and (2) unreasonable seizure. Plaintiff’s claims allegedly arise out of his May 18, 2005 arrest.

**III. Eleventh Amendment Immunity**

In his complaint, plaintiff states that he brings both his claims against the defendants in their official capacities. Complaint at 5-6. Claims against defendants in their official capacities must be dismissed.

The Eleventh Amendment bars suits against the state or one of its agencies in federal court, unless there is consent to be sued. *Penhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). There is no consent here. The Eleventh Amendment bar is jurisdictional and applies regardless of whether the suit is for damages or for declarative and injunctive relief. *Penhurst*, 465 U.S. at 102-103. Further, § 1983 does not override the Eleventh Amendment immunity of states and their agencies. *Penhurst*, 465 U.S. at 100.

Defendants are entitled to Eleventh Amendment immunity. Eleventh Amendment immunity applies when state officials are sued for damages in their official capacities. *Kentucky v. Graham*, 473 U.S. 159, 170 (1985). Defendants are state officials and entitled to Eleventh Amendment immunity. *Smith v. State*, 152 S.W.3d 275, 279 (Mo. banc 2005).<sup>1</sup> To the extent defendants are being sued in their official capacities, they are immune from suit for monetary damages, and this case should be dismissed for lack of personal and subject matter jurisdiction.

WHEREFORE, defendants Frank, Daut, Burle, Favazza, and Martin request that this Court dismiss Plaintiff's claims against them in their official capacities.

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<sup>1</sup> *Smith v. State*, 152 S.W.3d 275, 279 (Mo. banc 2005) held that St. Louis City police officers were officers of the State entitled to Legal Expense Fund coverage based on the language in 84.330 RSMo. establishing St. Louis City police officers as officers of the City and State.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON  
Attorney General

/s/ Diane Peters  
DIANE PETERS  
Assistant Attorney General  
Diane Peters Bar Number: 54784  
Attorneys for defendants Frank, Daut,  
Martin, Favazza, and Burle  
Missouri Attorney General's Office  
P.O. Box 899  
Jefferson City, MO 65102  
Telephone: (573)751-8834  
Fax: (573)751-9456  
diane.peters@ago.mo.gov

**CERTIFICATE OF SERVICE**

I hereby certify on this 9<sup>th</sup> day of June, 2008, the foregoing was filed electronically with  
the Clerk of the Court, and by operation of the Court's CM/ECF system, sent to:

Larry D. Hale  
Hale Law Firm  
1221 Locust Street  
Suite 310  
St. Louis, Missouri 63103  
Phone: 314-231-3168  
Email: halefirm@aol.com

/s/ Diane Peters  
Diane Peters Bar Number: 54784  
Attorney for defendants Frank, Daut,  
Martin, Favazza, and Burle  
Missouri Attorney General's Office  
P.O. Box 899  
Jefferson City, Missouri 65102  
Telephone: (573)751-8834